

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CIRIACO PUCILLO,

Plaintiff,

V.

Case No. 03-CV-12359 MLW

METSO PAPER, INC. AND

VALMET CONVERTING, INC.

Defendants.

MEMORANDUM IN SUPPORT OF
JOINT MOTION TO MODIFY SCHEDULING ORDER

Plaintiff Ciriaco Pucillo and Defendants Metso Paper, Inc. and Valmet Converting, Inc., by and through their respective counsel, respectfully submit this memorandum in support of their joint motion to modify the scheduling order to permit the parties to engage in expert discovery and to file dispositive motions. The existing Scheduling Order does not permit such discovery or the filing of such motions without leave of the Court.

DISCUSSION

On August 11, 2004, the Court issued a Scheduling Order for this action. The Scheduling Order bifurcates discovery, providing for an initial period “limited to the issue(s) of non-expert discovery . . .” to “be complete by April 20, 2005,” Scheduling Order ¶ 7, followed by a second period of discovery that has not yet been scheduled.

On August 5, 2005, Defendants filed a motion to modify the Scheduling Order to permit the filing of dispositive motions. On August 18, 2005, Plaintiff filed a motion to modify the Scheduling Order to permit expert discovery. The Court has scheduled a conference to address those motions on November 29, 2005. Plaintiff and Defendants have agreed to a proposed

schedule that will render the pending motions moot, and respectfully request that in lieu of the conference the Court adopt the schedule set forth below:

The proposed schedule establishes disclosure dates for opinion witnesses, deposition deadlines for opinion witnesses, a deadline for an Independent Medical Examination and a deadline for depositive motions. Specifically, it provides as follows:

- the Plaintiff shall serve his disclosures required by Fed. R. Civ. P. 26(a)(2) within sixty (60) days of this Order, and Defendants shall complete any depositions of the persons so disclosed within thirty (30) days of the disclosure;
- the Defendants shall be permitted to conduct an Independent Medical Examination within sixty (60) days of the date of Plaintiff's Rule 26(a)(2) disclosures, with a report to follow within a reasonable period;
- the Defendants shall serve their disclosures required by Fed. R. Civ. P. 26(a)(2) within ninety (90) days of the date of Plaintiff's Rule 26(a)(2) disclosures, and Plaintiff shall complete any depositions of the persons so disclosed within thirty (30) days of the disclosure;
- all discovery shall close thirty (30) days after the date of Defendants' Rule 26(a)(2) disclosure;
- any party may file a motion for summary judgment at any time, but all such motions shall be filed no later than thirty (30) days after the close of discovery; and
- all parties shall report to the Court in writing within thirty (30) days of the close of discovery the prospects for settlement.

Plaintiff and Defendants respectfully request that the Court approve and adopt the proposed schedule.

Date: November 22, 2005

Respectfully submitted,

/s/ Maureen Counihan

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*Attorneys for Defendants Metso Paper, Inc.
and Valmet Converting, Inc.*

CERTIFICATION

Pursuant to Local Rule 7, counsel for Plaintiff and Defendants have conferred and agree upon the relief proposed in the accompany motion.

/s/ David L. Kelleher
David L. Kelleher

